

At its meeting of Monday, December 4, 2000, at 10:25 a.m., upon a motion by **Commissioner Barnes**, and unanimously carried, the Board agreed to convene in closed session to consult with the attorney and preserve its attorney client privilege (NCGS 143.17.11). The County Manager announced there was the possibility of action when the Board returned to regular session.

Present in the Executive Chambers of the 1924 Courthouse were Chair Marie H. Huffman, Vice-Chair W. Steve Ikerd, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and Dan A. Hunsucker. Also present were Staff Attorney Debra Nass Bechtel, County Attorney Robert Oren Eades, County Manager J. Thomas Lundy, Assistant County Manager Steven D. Wyatt, County Clerk Virginia W. Sobotkin, and Public Information Officer C. David Hardin.

#### **SOUTHEASTERN CATAWBA COUNTY WATER SERVICE**

Background: See Minutes of regular session of February 5, 1996, and September 21, 1998, and closed sessions of February 21, May 1, and May 8, 2000, and May 16, 2000.) The County Manager stated he, Commissioner Ikerd Director of Utilities and Engineering (U&E) Barry B. Edwards, U&E County Engineer Douglas G. Chapman, P.E., Hickory Mayor William R. McDonald, III, City of Hickory Council member Patricia M. Moss, Hickory City Manager B. Gary McGee, Hickory's Director of Public Services Chuck Hansen, Gene Haynes (retired Public Services Manager for Hickory, and currently serving as a public works consultant for the City), Conover Mayor Bruce R. Eckard, Conover City Manager L. B. "Rick" Beasley and Conover Public Works Director Jimmy A. Clark met Thursday afternoon, November 30, 2000, with NC Department of Environment and Natural Resources Director Bill Holman and two members of his staff regarding the State's refusal to approve the Little Road connector line<sup>1</sup> and the water management plan. Separately, County Attorney Eades met with a member of the Attorney General's staff, and as he understood her opinion differed from that of the DNER.

He stated Secretary Holman had pledged to contact him early during the week of December 4. The County Attorney after the meeting attempted to have further discussion with the Attorney General's office to insure that they and the Secretary agreed on the State's position. The Secretary's staff had indicated that they would not approve the Little Road line until there is resolution with the City of Newton or the County has officially canceled its contract with Newton.

He stated he and Commissioner Ikerd strongly suggested the following action be taken when the Board returned to regular session.

The County formally notify the City of Newton that it deemed the city to be in breach of the contract.

The County resubmit the Little Road line for State approval immediately with the exception of the last 20 feet and a connection to the current lines. This would apparently give the County State approval of the majority of the line and, once under construction, the County could petition the State for approval of the last 20 feet.

That the portion of the line from Conover to Highway 10 be a part of Conover's Water I.D # and the portion from Highway 10 south be a part of Hickory's I.D # as opposed to a jointly held I.D. #, which was in the original proposal.

The Hickory City Council amend its water management plan to include service in this area. The Hickory City Manager said on November 30 if this required a special meeting of the City Council, this would be done.

That the Board on December 4 take official action to notify Newton that two cooperative contracts will be canceled unless it drops its opposition and that other cooperative arrangements will be canceled.

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<sup>1</sup>See Minutes of Regular and Closed sessions of Monday, November 6, 2000, for more information.

He then presented the following drafts of letters to Newton Mayor R. Wayne Dellinger and City Manager Edward F. Burchins, a separate letter to Secretary Holman and a draft statement to be read when the Board returned to regular session.

**The County Attorney** reaffirmed the Board's reason for this closed session which was the dispute with Newton. Obviously this dispute created alternative courses of action, and each of these had various legal ramifications. The Board needed to discuss these alternatives within the context of possible legal action.

He then apprised the Board of his meeting with Assistant Attorney Sarah Meechem of the Attorney General's office. Ms. Meechem served as advisor to the NCDNER. She was not aware DNER had advised the County it required a letter from Newton stating it would release Catawba County from the contract. Her opinion was such a letter would not be necessary. However, the State would need some indication of what the County was doing to end the contract and to ensure continued operation of the water system.

The Board discussed in-depth alternatives proposed and the possible legal ramifications. By consensus the Commissioners agreed to the reading of a prepared statement by Chair Huffman<sup>2</sup> and the action proposed in that statement, and the mailing of the following letters supporting that statement.

*Secretary Bill Holman  
Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601*

*Dear Secretary Holman:*

*Thank you very much for allowing us to spend time with you November 30, 2000, officially requesting that the Department (1) approve the water management plan submitted to your office on August 22, 2000, and (2) approve the Little Road water line specifications submitted to your department on July 27, 2000, then resubmitted on September 5, 2000.*

*To state as clearly as possible regarding the plans for provision of water service in the Southeastern portion of Catawba County, the county has awarded a bid to construct the Little Road Water line and we are in the process of having the contract signed. The low bid was over \$100,000 less than the second low bid. We expect that the approval to proceed will be given by mid December and the water line should be constructed and in place by May 2001. Between now and that date, the City of Newton will continue to provide operation and maintenance on the current Catawba County-owned line down to Sherrills Ford Elementary School. However, based on Newton's unwillingness to provide operations and maintenance on any other water extension, Catawba County will provide the operations and maintenance, through a contract with Hickory, on the following lines:*

*Sherrills Ford Subdivision – Island Point Road Water System, PWS ID# 01-18-322 which includes Anchors Landing Subdivision, Island Point Road Water Line and Northview Harbour Phase 1.*

*Sherrills Ford Subdivision – Molly's Backbone Water System, PWS ID# 01-18-321 which includes White Dove Estates.*

*As soon as the Little Road line is installed, tested, and meets the construction standards of the State of North Carolina, the City of Hickory will become the supplier of water and will have the responsibility for operation and*

The full text of the statement is available in the regular session Minutes of December 4, 2000. It was read by Chair Huffman after the Board returned to regular session.

*maintenance of all of the lines, not just the lines currently maintained by the City of Newton, but also those for which the City of Newton has refused to provide operation and maintenance and lines which are yet to be constructed to serve the citizens of the region.*

*Thus, no resident will be without water service at any time and the Department will have no doubt regarding the party responsible for operation and maintenance of the water lines.*

*Again, we appreciate your willingness to meet with us. On behalf of Catawba County, Hickory City and Conover City, as well as the 17,000+ people who live in the southeastern portion of Catawba County, I ask that you give immediate approval to (1) the Little Road waterline and (2) the water management plan.*

*I look forward to receiving your positive response and talking with you this week. In the interim, based on your staff's suggestion, we have made arrangements to resubmit the Little Road line with the exception of the last 20 feet. The portion of the line from Conover's existing service to Highway 10 would be a part of Conover's water ID number and the portion from Highway 10 South would be a part of Hickory's ID number, as opposed to a jointly held ID number. Since we are resubmitting the line less the last 20 or so feet and the connection, this should remove any objection on the part of the Department. If you are not ready to give final approval to the entire line, I ask that you give immediate approval (not the six weeks referenced in the meeting) so we can proceed with construction. This will allow us additional time to address any other concerns of the Department before proceeding with the final 20 feet and the interconnection.*

*Sincerely,*

*J. Thomas Lundy*

*Catawba County Manager*

*pc: Board of Commissioners  
B. Gary McGee, Hickory City Manager  
Rick Beasley, Conover City Manager*

*December 4, 2000*

*The Honorable R. Wayne Dellinger  
Mayor, City of Newton  
PO Box 758  
Newton, NC 28658-0758*

*Mr. Edward F. Burchins  
Newton City Manager  
PO Box 550  
Newton, NC 28658-0550*

*Dear Wayne and Ed:*

*The February 5, 1996, agreement between Catawba County and the City of Newton contains the following provision: "The County shall have the right at its option to participate in future line additions, extensions or connections from any revenue-sharing line(s) installed and operated as a part of the project ("the line"), provided any such addition, extension or connection with serve County customers and not customers inside the City's corporate limits."*

*Earlier this year the City of Newton was unwilling to honor line extension requests for Island Point Road, White Dove Estates, Anchors Landing, and Northview Harbour. In addition, the City made it clear that any line extensions would come about only as a result of separate contracts negotiated between the parties and with separate rate structures for those individual lines. Further, Jay Stowe, Newton's Director of Public Works and Utilities, in correspondence with the Department of Environment and Natural Resources has indicated "... specific lines that we do not plan to accept for operations and maintenance include, but are not limited to, Island Point Road, Joe Johnson Road, Ted Lane, White Dove Estates, Anchors Landing, Northview Harbor, Murray's Mill Estates, and Molly's Backbone Road."*

*Therefore, on May 16 I officially informed you that the County would proceed to “make other long term arrangements for water service.” After reaching agreement with the cities of Hickory and Conover for water service in the southeastern service area, I called to inform you of the agreement, prior to its execution, and then followed up with a letter of August 21<sup>st</sup>.*

*Catawba County, the City of Hickory and the City of Conover are proceeding on our agreement. We have awarded a bid to construct the Little Road line. This letter is to officially notify the City of Newton that Catawba County deems that the City has breached the contract of February 5, 1996, with the addendum of September 21, 1998, and this is our official notice of termination of the contract with the City of Newton. Catawba County will proceed as we have informed you earlier this year. As soon as the interconnect is constructed and tested, Hickory water will begin to supply the southeastern portion of Catawba County and Newton will be relieved of its responsibility for operation and maintenance of the line down to Sherrills Ford Elementary School.*

*Per the contractual agreement, Catawba County first approached Newton to serve the entire area. It was only after Newton’s unwillingness to serve the entire southeastern area under the contracts executed in 1996 and 1998 and repeated meetings and phone calls that the County informed Newton that it would seek another long term source. While Newton may not agree with the County’s choice of providers, it is counterproductive for the City to continually tell the Department of Environment and Natural Resources that it is opposed to the plans of Catawba County and the cities of Hickory and Conover. I informed you by phone two weeks ago that individual commissioners had inquired about other contractual relationships we had with the City of Newton. They have expressed concern that we should not be in cooperative arrangements with a local government which is not willing to work with Catawba County and is trying to establish roadblocks for service, even to the point of threatening litigation. As such, this is to officially notify the City that the County is giving notice that:*

*Pursuant to the terms of an agreement dated August 28, 1999, Catawba County hereby gives notice that the County will terminate all services related to hardware/software support contained in the agreement effective July 1, 2001.*

*Catawba County hereby gives notice that the County will terminate tax collection services to the City of Newton effective July 1, 2001, with the exception of motor vehicle taxes which by law we are required to collect.*

*Catawba County is willing to continue providing these, and perhaps other services, to the City of Newton. In order to continue, the City of Newton would need to drop its opposition to the County’s contract with the Cities of Hickory and Conover. Continued cooperation will not be possible with Newton’s opposition, nor will future cooperation. It is my hope that we can work together to repair and rebuild a positive working relationship. However, the ball is in your court. You must take steps now by cooperating and dropping your opposition to our plan to provide water service to the deserving citizens of Southeastern Catawba County.*

*We must hear from you no later than 5:00 p.m. on Friday, December 15, 2000, or we will have no alternative but to assume that Newton does not intend to drop its opposition to our water service plans and will proceed with our plans to terminate the above outlined services effective July 1, 2001.*

*Sincerely,  
Marie H. Huffman, Chair  
Catawba County Board of Commissioners*

*J. Thomas Lundy  
Catawba County Manager  
c: Newton Board of Aldermen  
Catawba County Board of Commissioners*

#### **ADJOURNMENT**

At 11:45 a.m., the Board returned to regular session and took action on this matter.

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Marie H. Huffman, Chair

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Virginia W. Sobotkin, Clerk